

No. 5:06-CV-97-F

ORDER

Case 5:06-cv-00097-F Document 79 Filed 08/24/07 Page 1 of 3

Order and Judgment are based on an incorrect application of clear legal precedent.

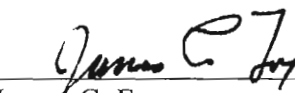
The court has thoroughly reviewed the July 23, 2007, Order, the parties' memoranda regarding Defendant's Motion for Summary Judgment and the Plaintiff's Motion for Relief from Order and Judgment, and concludes that the July 23, 2007, Order is correct and in accordance with the law. Specifically, despite Plaintiff's arguments to the contrary, the court concludes that the July 23, 2007, Order was in accordance with the Fourth Circuit's decision in *Fredericksburg and Potomac Railroad Company*, 803 F.2d 1222 (4th Cir. 1986), in that neither Plaintiff's EEOC charges, nor the Complaint in this action, contained factual allegations necessary to support a disparate impact claim and put Defendant, and this court, on notice of such a claim.

Moreover, the court notes that even if Plaintiff had included such sufficient factual allegations, she still has not established a *prima facie* case of disparate impact. Plaintiff relies solely upon the fact that no female was filed as a permanent TW in the Wilkes Maintenance Unit from 1999 until 2006. Plaintiff does not provide, however, any data with regard to the relevant labor pool. *See, e.g., Carter v. Ball*, 33 F.3d 450, 456-57 (4th Cir. 1994)(determining that statistical evidence that none of the defendant-employer's thirty managerial positions were filled with African-American personnel was properly excluded from consideration at trial because the plaintiff presented no supporting evidence relating to the pool of African-Americans qualified for those positions, and explicitly rejecting the plaintiff's "inexorable zero" argument). Without such evidence, Plaintiff proffers no reliable proof of underrepresentation. Finally, the court finds that its analysis of her disparate treatment claim is also in accordance with the law.

Accordingly, Plaintiff's Motion for Relief from Order and Judgment [DE-75] is DENIED.

SO ORDERED.

This the 23rd day of August, 2007.



James C. Fox
Senior United States District Judge